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# An analysis of the criminal justice system -a literature survey.

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# AN ANALYSIS OF THE CRIMINAL JUSTICE SYSTEM -A LITERATURE SURVEY

by

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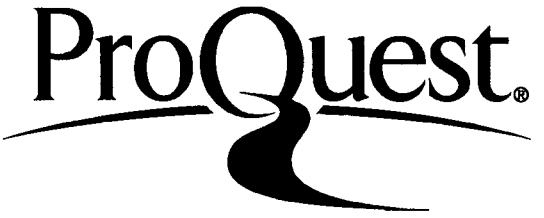

CERTIFICATE OF APPROVAL

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## ABSTRACT

It is generally agreed that the major objective of the administration of criminal justice is the reduction of crime through the use of procedures which are consistent with the protection of individual liberty. However, there exist a wide range of views as to the specific means for achieving this objective. This paper attempts to present some of the currently prevailing views on the structure of the Criminal Justice System, as well as some of the suggested methods of measuring and evaluating its performance.

The format used consists of an initial presentation of the system as a whole and is followed by presentations of the three major subsystems (of corrections, the courts, and law enforcement). Within each of the systems areas there will generally be a discussion of the objectives, the current and proposed performance indicators, and the accomplishments as published in recent literature. Where relevant, an effort was made to use timely source material. The editorializing by this author has been kept to a minimum.

Performance measurement by system rates.

> The criminal justice system, to the detriment of both society and the offender population, does not currently operate as a truly functional interdependent system. It is not sufficiently integrated with respect to public agencies and community resources. It does not yet have an effective means for assessing its own status or its impact on crime and delinquency...It requires a systematic procedure for comprehensive planning as a forerunner to comprehensive modification.[32]

Admittedly it is far easier to describe the need for a systems approach to criminal justice planning than to design such an approach. Essentially, a planning design must determine what actions to undertake and how to evaluate the impact of these actions. The following is a proposed design scheme,[32] and introduces the concept of a "system rate" to evaluate performance.

In considering the criminal justice system one must include as part of the system both the community and the offender (in addition to the usual listing of agencies), despite the fact that it causes additional complexity. Keeping in mind this broad system concept, what is then required to measure its level of functioning is a series of indices reflecting the major decision-making points. These indexes are simple mathematical expressions and are defined

as "system rates." These rates will describe the efficiency and the effectiveness at various stages, telling both what has happened and how well it was done. For example, a "police-agency-clearance - rate" might be established as a ratio of crimes solved to crimes known by the police. It would be a function of the level of criminal activity, the reporting system, and the efficiency of police investigative practices.

Most immediately, these rates could provide answers to the more mundane questions of the degree to which the various organizations in the system perform their routine functions. But perhaps more importantly, this type of rate assessment may also be used to measure the extent to which the system as a whole is fulfilling its fundamental tasks.

"The system must provide a floor of security against attacks on property and person; must generate public confidence in the impartiality and fairness with which charges are adjudicated. It must also preserve the inviolability of the rights of the person in his opposition to the state as his putative equal. As a social control mechanism, the criminal justice system has the delicate task of imposing its powerful sanctions in a manner calculated to induce their acceptance by all against whom they may be applied. Difficult as it may be to define, <u>justice</u> remains the principle output of any system of criminal justice."[32]

When developed, system rates can serve several vital functions for the criminal. Justice system: (1) They will permit a comprehensive assessment of the current efficiency and effectiveness of various system components. (2) They will indicate efficiency and effectiveness over time (showing trends). (3) They will suggest areas for investigation. (4) They will yield measures of the impact on the system of changes introduced anywhere within the system. (5) They will tend to encourage interagency cooperation with a view toward their systematic impact. (6) They will provide a basis for simulation analysis.

The specific system rates suggested for monitoring and the rate determinants governing them are indicated below.

| SYSTEM RATES | RATE DETERMINANTS |
|---|---|
| 1. Community absorption | 1. Deviant Behavior Definitions |
| 2. Apprehension | 2. Deviant Behavior Level |
| 3. Processing | 3. Community Resources |
| 4. Release | 4. Community Attitudes |
| 5. Reabsorption | 5. System Philosophies |
| 6. Recidivism | 6. System Efficiencies |
| | 7. Community-System Coordination |

The analytical procedure used with this system is cyclical; involving first an assessment of the system rates (which describe the functioning of the criminal justice system), the implementation of changes in the rate determinants, and a reassessment of the system rates. The six indicated categories of system rates were chosen as representative of the state of the system as a whole.

To further elaborate on each of the suggested rates: (1) Community Absorption Rate - The majority of criminal acts do not lead to the apprehension of the offender (to say nothing of convictions). Some acts are never detected, some are detected but not "solved," some are detected but the offender is handled informally by the citizenry and not reported to officials of the criminal justice system, and some are detected but handled by various community agencies in lieu of introduction into the system. These last two examples of detection without introduction into the formal system are known as "absorption procedures" and are the processes most open to change by the system. A "community absorption rate" requires procedures to estimate the number of processable criminal acts that actually take place and the obtaining of accurate data on the proportion of such acts handled unofficially.

(2) Apprehension Rate - The first legal step in the official response to an offender. It is similar to an ab-

sorption rate in that it can be determined once a procedure is established for estimating the actual number of processable acts. Separate rates will exist for police agencies, courts, probation and parole agencies, etc. since the police do not represent the sole entry point into the system.

(3) Processing Rate - Once apprehended, an individual is subject to a vast range of potential decisions concerning his disposition. At probation intake a person may be released or placed in some institution. A court may dismiss a case, hold it over, reduce charges, etc. Each of these types of decision points will yield a processing rate for the percentage of persons handled in a particular fashion by the system, and can be viewed as indicators of the system philosophy in the administration of justice.

(4) Release Rate - Strictly speaking this rate is part of the "processing rate," but it is considered independently because of the amount of attention it receives. It is a measure of the cumulative outputs of the decisions within the system, and it will effect the two system rates that follow. Since almost all offenders are eventually released, the interest in release rate is primarily geared toward

(1) the processing points at which the release takes place, and (2) the rapidity of release following the final pre-release disposition.

(5) Reabsorption Rate - This rate refers to the assimilation of the offender back into the community following his release. It is defined as the percentage of offenders who are placed in "major societal institutions" (eg/ school, employment, social service agency) and who are therefore presumed less likely to recidivate. A precise definition of what is to be considered effective reabsorption must be determined before a rate can be computed.

(6) Recidivism Rate - Defined as the proportion of released offenders who are apprehended for acts committed subsequent to release. A separate rate should be computed for each point of release from the system (police, courts, correctional institutions, etc.).

After ascertaining these six categories of rates, one would be in a position to know such things as current level of system effectiveness, what changes are taking place, what areas are in need of change, and what effect modifications might have. However, there are problems in determining these system rates. Apprehension and absorption rate depend upon reliable estimates of illegal activity

in the community independent of estimates derived from the usual police or court statistics. A possible solution to this would be "victimization surveying" - a topic covered later in this report. There are other difficulties as well. This scheme necessarily means a revision of the current record systems utilized by the various agencies in the system (eg/ every police department must adopt a common record system which in turn would be compatible with state bureaus of criminal statistics). All courts would have to develop common record systems containing such information as offender history. (These court record systems would in turn have to be compatible with those of enforcement and other criminal justice agencies). Generally, information would have to be consistently maintained for probation, parole, courts, police, public prosecutor, etc. purposes. Each individual offender must be identifiable as an input or output in each agency of the system. Needless to say, all of this requires high level planning and cooperation, as well as appropriate information-security safeguards to protect the civil liberties of the offenders.

Implementation, also, would be complex, involving coordination of different types of agencies as well as within agencies. It would require the creation of extensive, modern record-keeping procedures in agencies that have not traditionally felt the need for such procedures. Controls

on the use of privileged information would have to be established.

The six indicated system rates are determined by a host of influences, the so called "causes of crime." In this systems approach, the many "causes of crime" were consolidated into specific categories defined as "rate determinants" - the actual determinants of the various system rates. The functioning of the system and the resultant output is described by the system rates but determined by the rate determinants:

(1) Deviant Behavior Definitions - Community attitudes serve as inputs in the formation of laws which define the boundaries between legal and illegal activity. Changes in these definitions of deviancy by society at large may lead to elimination or alteration of existing laws with a resulting impact on the number of violations. Changes in violation rate besides being dependent upon the nature of an individual's activity, is also dependent upon the evolving definitions of deviant behavior as expressed in the law.

(2) Deviant Behavior Levels - A function of many factors, this merely represents the "level of illegality" in the community as determined by such techniques as victimization surveys.

(3) Community Resources - There are three major ways in which community resources influence deviancy rates. They can effect the "level of illegality" to the extent that the level is a function of economic opportunities, educational levels, welfare services, etc. They represent the availability of prevention agencies such as boys clubs, school counseling programs, clinics, and recreation activities. They represent the availability of agencies or mechanisms for reabsorbing the ex-offender such as special educational and employment opportunities, alcoholics anonymous, etc.

(4) Community Attitudes - These are the dominant community feelings about both crime and justice. An apathetic community that fails to back its law enforcement and other criminal justice system agencies may increase its own crime problem. The level of tolerance of crime has a direct effect on system rates. For example, the level of tolerance for certain criminal acts and the corresponding propensity (or lack of) to report such acts to criminal justice officials will have a direct influence on apprehension rates and the resulting estimate of levels of illegality.

(5) System Philosophies - The various criminal justice agencies each operate on the basis of their own philosophy of crime causation and prevention. However, the operating procedure of a particular agency may influence a seemingly unrelated rate parameter. For example, a lenient juvenile court will produce high early release rates and low institutionalization rates. Since those institutionalized will be only the worst offenders, the result may be high recidivism rates among those released from institutions. Simply observing this recidivism rate would indicate that it was determined by a certain "level of illegality" where actually it was as much determined by the lenient court philosophy.

(6) System Efficiencies - These include such diverse factors as information processing, communications equipment, transportation, detention facilities, cost accounting procedures, quality of agency personnel, etc.

(7) Community-System Coordination - This is the interaction between the criminal justice system and the community it operates in (although it might be difficult to isolate the two). Two critical points of interaction include the release of offenders, and the efforts of the system to bring about necessary legislative changes in the law.

Program implementation.

In 1971, The National Advisory Commission on Criminal Justice Standards and Goals was established by The Law Enforcement Assistance Association (LEAA) of the Justice Department. The objective was to formulate standards and goals for crime reduction and prevention at state and local levels via a national strategy - "to encourage and facilitate cooperation among all the elements of the criminal justice system and with the communities they serve."[41]

This Commission characterized the criminal justice system as consisting of four elements: criminal justice planning; information systems; criminal justice education; and criminal code revision.

In the area of criminal justice planning, a major federal step was undertaken in 1968 with the passage of The Omnibus Crime Control and Safe Streets Act (which has since been extended under another name). Under this Act each of the 50 states established a State Criminal Justice Planning Agency (SPA) as a prerequisite for receiving federal funds. However, although each of the states now had a "planning" agency, it soon became apparent that generally the only functions that these SPA's were performing was a budgeting of their allocated funds. The questions of system goals and

directions remained unanswered. "The necessity of a quantitative analysis of the crime problem is an obvious first step in a planning process. Priority of crimes (eg/ violent, burglary, embezzlement, white collar), apprehension rates, recidivism rates, court processing rates, etc. must be determined. Crime-oriented planning must be instituted. Measurement techniques must be developed and criminal justice activities should be evaluated in terms of their direct impact on crime."[31]

One of the biggest obstacles to improving the criminal justice system is a lack of information regarding its current operation. Data is needed for both operational and management purposes, and the needs of law enforcement, judicial, and correctional agencies vary. (The particular system requirements of these three agencies are discussed in greater detail later in this report.) Basically, the police require a speedy and responsive system and have the least need for standardization of technique; a court information system should provide the data needed for decision-making in individual cases as well as court and calendar management data; and a corrections information system should provide program evaluation information, predictive data on post release behavior, offender statistical data, and aid in resource allocation.

Towards these ends a number of jurisdictions have already implemented information systems that are part of a

national system. A National Crime Information Center (NCIC) has been established to maintain data on the nature of individual crimes, and a Computerized Criminal History (CCH) file in maintaining information on individual offenders. Additionally, well under development is an Offender-Based-Transaction-System (OBTS) which will monitor the progress of a defendant through the criminal justice system.

It should be stressed that the increased usage of computerized information systems must always be weighed with the overriding concern for the protection of personal privacy and system security.

What information should be obtained, how to obtain it, and who has access to it, must be balanced against the constitutional "right" to individual privacy. Besides the necessity that the information gathered be accurate, complete, justified, and properly disseminated, the potential benefits must outweigh the potential injury to a person's privacy and related protected interests.

Criminal justice system personnel.

The most costly element in the criminal justice budget is personnel. In 1970, 90 percent of the police, 77 percent of the courts', and 75 percent of corrections' expenditures were for payroll.[46] There is therefore

clearly a need for effective selection, placement, evaluation, and training programs. Inhibiting the development and evaluation of training programs is the unclear identification of the roles, tasks, and objectives of the criminal justice personnel, and the skills and knowledge necessary for successful performance of these roles and tasks.

In 1972, the Rand Institute carried out the "Police Background Characteristics and Performance Project of the New York City Police Department" in which the background of officers was compared with subsequent job performance.[36] The conclusion was that those with better education and higher recruit training scores subsequently had better performance records.

In 1960, 65 educational institutions offered full time law enforcement degree programs, by 1972, 515 full time programs were offered. However, "regrettably, most curriculum development has proceeded independent of systematic analysis of the tasks criminal justice personnel perform and will be expected to perform. In addition, most higher education programs have dealt with police and law enforcement, neglecting a core curriculum that could apply equally to police, courts, corrections, and specialized prevention agencies. By failing to treat criminal justice as a whole, many institutions of higher education

have overlooked an opportunity to help unify a frequently divided and unnecessarily competitive system."[41] In recognition of this problem, the LEAA in conjunction with some of the State SPA's initiated a comprehensive research effort to identify the roles, tasks, and performance objectives of all operational criminal justice personnel. The project is known as STAR - Systems and Training Analysis of Requirements for Criminal Justice System Participants. (The present status or measure of effectiveness of this program was not available for this report.)

Victimization surveying.[41]

The demand for clear, accurate, valid data, on anti-social behavior and its impact on society and the criminal justice system has been growing rapidly. There is an ever increasing amount of public and official attention being paid to crime in the streets, personal theft, stranger to stranger violence, and general citizen fear of crime. Planners in the criminal justice system often find that their efforts to attack a specific crime problem are sidetracked until they can formulate a detailed analysis of the problem; hence the problem of acquiring quality statistical data. For example, in a city program on street crime typical questions raised might be 'how much there has been over some time period,' 'is the amount up or down,' 'how much is based

on economic motive,' 'how much is between strangers,' 'where and when does it occur,' and 'who have the victims been (sex, age, race, etc.).'

Until fairly recently, the only statistical information on crime and criminals was derived from the administrative records of the operating agencies. Although useful for the purposes it was designed to address, this information could not provide the timely statistical data required for comprehensive planning or evaluation - besides the fact that a department such as the police has neither the manpower nor the technical resources to assemble such data. (The same can be said of most any management system or even manufacturing process. Even a substantial data base on a particular processing rate may not provide any great insight as to the factors influencing that rate. To effectively evaluate the causes of a rate, more diverse information than output divided by input is required).

Much of the data needed for the study of crime and antisocial behavior does not exist in operating agency files. Victimization surveying is a technique that has been developed to ascertain the required information.

With victimization surveys an area is first examined in terms of its population groups - businessman, housewives, white and blue collar workers, home and apartment dwellers, etc; sample groups are defined; and representative members

are interviewed in depth with standard questionnaires to determine their experiences with predatory crime. The approach seeks to gather statistical information from both the victims of crimes, and from the citizens in general, about their attitudes and fears of crime.

The use of victimization surveys has revealed that the frequency of crimes such as assaultive violence, robbery, and burglary exceed official estimates as reported by police by factors of 1.5-5. because of unreported crimes. (The reasons given for not reporting the crimes included "nothing would be done" - 40%; "not believed important enough" - 30%; private or personal - 5%; "police wouldn't want to be bothered" - 5%). Some other interesting results from this (national) survey (of a few years ago) are: only half the assaults that occur are between strangers; person to person thefts occur with the same frequency in buildings as on the street, playground and parking lot; 40% of the robberies take place during the daytime; 17% of the robbery and assault victims can expect to be victimized again within 12 months; the victimization rate of males is 2 1/2 times greater than females; and a black has a more than 50% greater chance of being robbed than a white.

A victimization survey administered periodically in the same locale will indicate measures of change in victims and assailants as well as attach a value to the cost of

crime in terms of physical injury, property damage, insurance protection, medical expenses, dollar loss, etc.

The essence of any measurement and evaluation program rests in comparing the program influence on outcome and effectiveness of the project. Evaluation addresses questions of effectiveness more than efficiency and is thus goal oriented, focusing on system objectives rather than the cost of inputs. Feedback from program evaluations should be used in the planning stages to modify objectives and strategies.

## CORRECTIONS

> The failure of major institutions to reduce crime is incontestable. Recidivism rates are notoriously high. Institutions do succeed in punishing, but they do not deter. They protect the community, but that protection is only temporary. They relieve the community of responsibility by removing the offender, but they make successful reintegration into the community unlikely. They change the committed offender, but the change is more likely to be negative than positive.....It is no surprise that institutions have not been successful in reducing crime. The mystery is that they have not contributed even more to increasing crime.
>
> National Advisory Commission on Criminal Justice Standards and Goals, 1973

It has been estimated that 60 percent of the persons incarcerated in this country are awaiting trial. Everyone is looking for successful alternatives to incarceration, with probation and parole receiving increasingly favorable public attention. (The taxpayer can save several thousand dollars per year for every person placed on parole.) The criminal justice system should become the agency of last resort for social problems and the institution should be the last resort for correctional problems. Such offenses as income tax evasion, activities in restraint of trade, and similar "crimes" could quite possibly be better handled by bureaucratic measures then by traditional courts and prisons.[9]

Of primary importance in the analysis of the corrections subsystem is the definition of goals and objectives,

and the determination of standards to measure achievement. Corrections may be broadly defined as the community's official reaction to the convicted offender, with the fundamental objective being to secure the means for an offender to pursue a lawful life style in the community. In this comprehensive view of corrections, both the offender and the community are included in the system, the purpose being the successful reintegration of the offender.

Manpower utilization.

Modern management techniques are needed to analyze manpower needs and to recruit and train personnel for correctional staff. Active efforts should be made to recruit from minority groups, which are usually overrepresented among offenders and underrepresented among the staff. (At Attica before the 1971 riot, 54% of the inmates were black, and 9% were Puerto Rican, but there was only one black and one Puerto Rican on the Staff.) It is imperative that staff be able to achieve rapport with offenders who tend to be young, black, Puerto Rican, Chicano, Indian (depending on the geographic area), and to come from ghettos or rural slums. In addition, women (who have generally been discriminated against in hiring and promotion) and ex-offenders (who have a profound understanding of the effects on the on the individual) should be used to fill staff positions.

Competitive salaries with those of other criminal justice personnel who work in positions calling for comparable training and performance must be paid to correctional staff.[43]

Effectiveness of correctional programs.

The traditional measures of effectiveness of correctional programs is the degree to which the probability of recidivism is reduced. Five basic questions have emerged as to the behavior of convicted persons subjected to alternative procedures. The answers, if attainable, will yield the relative effectiveness of various correctional programs. (1) Will offenders act differently if locked up as opposed to being on probation? (2) Will they recidivate less if locked up longer? (3) Does educating and "treating" in prison reduce recidivism? (4) Does supervising them more closely in smaller parole caseloads reduce recidivism? (5) What differences are there if prisoners are discharged outright or supervised on parole?

Keeping in mind that there are many variables involved, some of the suggested probable effects follow.[1] (1) Lock them up? This decision is made not on the basis of relative rehabilitative efficiency, but rather the courts put only the "best risks" on probation. Therefore

a simple analysis of the difference in recidivism rates between prison and probation cases will not answer questions about their relative effectiveness. Experiments run by the California Youth Authority Treatment Project yielded different results depending upon how the sample and control groups were chosen. While initial results were interpreted to show lower recidivism rates for those in the probation group, they were later reevaluated to the contrary when it became apparent that the results were strongly influenced by the parole agents involved and the nature of the offenses committed by their wards. No conclusion as to the relative effectiveness of institutional confinement versus community supervision was obtained. The question remains open and controversial.

(2) Keep them locked up longer? The findings of a California Department of Corrections study made in the 1950's indicated a relationship between the amount of time served and the probability of recidivism. Generally it was found that the longer the offender was kept in prison, the greater the probability of recidivism. "It is difficult to escape the conclusion that the act of incarcerating a person at all will impair whatever potential he has for a crime-free future adjustment and that, regardless of which "treatments" are administered while he is in prison, the longer he is

kept there, the more he will deteriorate and the more likely it is that he will recidivate."[1]

Incarceration appears to be a very short term protection. Furthermore, there is evidence that many persons in prison do not need to be there to protect society. For example, in the Gideon v. Wainwright decision (1963), the U.S. Supreme Court overturned the convictions of persons in the Florida prison system who had not had an attorney. More than 1000 inmates were released within a short time span; one group as a result of the Gideon decision and another as a result of the expiration of their sentences. Over a 2 1/2 year period the Gideon group recidivism rate was 13.6 percent while the other group's was 25.4 percent.[43,38]

Many persons may be able to serve their sentences in the community without undue danger to the public. Probation, fines, and restitution are less costly than incarceration, and consistently produce lower rates of recidivism after completion of sentence.

(3) Treatment in prison? Society's perception of criminals has undergone some change. Today criminals are viewed as either bad or sick. If they are bad they require custody, if they are sick they require treatment. The trend has been towards treatment, and group counseling has been one of the most widely applied and recommended prison treatment tech-

niques. The primary goal of the counseling is rehabilitation, with the secondary goal being the encouragement of institutional order.[1]

(4) Close parole supervision? The intensity of parole supervision is directly related to the caseload size of the parole agent. Experimentation with caseload sizes had no direct effect on the amount of recidivism.[1]

(5) Outright discharge or parole? "While considerable evidence exists that some types of offenders have relatively more or less likelihood of recidivism than others, there is, as yet, almost no evidence that available correctional alternatives have any impact on those likelihoods. The variations in recidivism rates among the alternatives are for the most part attributable to initial differences among the types of offenders processed."[1]

Sentencing disparity.

Correctional institutions may be impeded by the sentencing practices of the courts. The disparity of sentences, as well as their length, determine the extent to which an offender may be rehabilitated. One can hardly expect rehabilitation to be achieved if the offender sees no justification for his sentence. He must at least see his sentence as equitable in terms of the sentences imposed on

his fellow prisoners. The sentence determines whether a convicted offender is to be confined or be supervised in the community, and how long corrections will have control over him. It is argued that court decisions impede the correctional process by restricting corrections administrators and staff in their flexibility to provide individualized treatment.[15,16,25]

In 1972, the New York Times made a study of sentencing practices that indicated sentence disparity to be a major obstacle to achieving effective corrections. Of the offenders sentenced to Federal prisons in 1970, whites were commited for an average of 13 months, and nonwhites for an average of 29 months. In drug cases the distinction was whites 61 months, nonwhites 81 months. A 1973 Federal Bureau of Prisons report indicated that the average sentence of all persons committed to Federal prisons was 43 months for whites, and 59 months for blacks. While it must be emphasized that a direct cause and effect relationship should not be inferred from this data, it can be said at least to raise some questions on the issue of sentencing equality on the federal level.[43,12]

Sentence duration.

From a correctional standpoint there should be no imposition of maximum sentences. All sentences should be

for life with correctional authorities making the decision on when to terminate their involvement (when rehabilitation is complete). The maximums legislated by criminal statutes are time restraints which are not directly related to the needs of either the program or the offender. The justification given for such a policy is that it reduces the possibility of disparate sentencing, and that although it tends to limit the time available for a correctional program, the effect of the program is enhanced by the increased offender morale (resulting from the sentencing equality).[45,11,26]

Minimum sentences on the other hand, tend only to affect the offender adversely. Applying a statutory minimum to all offenses of a certain type represents the philosophy that a shorter period of confinement does not allow sufficient time for the development of a correctional program. This is a decision, however, that should properly be made by the corrections agency, not by the legislature.[45]

Legislators can deal only with the offense in determining mandatory provisions, the offender is an unknown variable. From the standpoint of criminal justice system functioning, mandatory sentences should not be imposed by law, but rather determined by the agency in which the expertise lies - corrections.[45,11]

Placing this added responsibility on corrections agencies would perhaps lead to some sort of accreditation

system in which certain standards of service and effectiveness would be recognized, and the correctional administrator would be held accountable for results. Today, institutions are required to do little more than keep offenders until ordered to release them. So unless riots, escapes, or scandals occur, the administrator has satisfied his requirements. Adding this sentencing function to corrections would tend to expand the present, sometimes short range goal of maintaining day to day order, to its fundamental objective of offender reintegration ,,a coinciding with the broad objective of the criminal justice system.[45]

Parole.

Of all offenders that enter the correctional system, the predominant mode of release is parole. Although it has been attacked as leniency, parole advocates contend that the system is designed to protect the public by providing a supervised return to the community rather than a total release. The objective of parole board members in their decision making is to reduce as much as possible the risk that the offender will recidivate.

The measures of recidivism currently used vary so much, jurisdiction to jurisdiction, that useful comparisons are nearly impossible. In some jurisdictions only those

parolees who return to prison are counted as failures, in others the number of failures is determined by the number of warrants (indicating a parole violation) issued. Some jurisdictions observe recidivism during the span of the parole period, others only during the time immediately following discharge, and others include the rest of the parolee's life.[15]

For the past fifty years researchers have tried to develop statistical techniques for increasing the precision of recidivism probability forecasting and to identify the factors that can be shown to be related to parole outcome.

Probability statements were produced by statistical technique, and they proved to be more accurate in estimating parole outcome than the traditional case methods. Nonetheless, they have been used relatively little in the parole field. It is argued that simply knowing the probability of success or failure is not nearly as important as knowing the type of risk involved. A parole board member is more likely to tolerate higher risks if an offender is prone to commit a forgery than if he is prone to commit a crime against a person. "It seems doubtful that in the foreseeable future statistical methods can entirely substitute for the judgments of parole board members and examiners. The intricacies of each individual case make total dependence on any statistical system highly risky."[45] Statisti-

cal predictions can be helpful in providing guidelines as to general categories into which particular inmates fit but it appears that an optimum system will use both statistical and individual case methods.

The deterrent effect of criminal sanctions.

The bulk of the arguments both for and against punitive sanctions seem to be founded on ethical grounds or "common sense," and generally have been advanced with little scientific support. However, in a study of the crimes of homicide, rape, robbery, assault, burglary, larceny, and auto theft made several years ago, researchers did reach the following conclusions: (1) Certainty of punishment has a deterrent effect on crime rates. (2) Severity of punishment only has a deterrent effect when the certainty level is above a certain point. (3) Other factors being equal, the deterrent impact of certainty and severity of punishment will be greater for a rational economic crime like burglary than for a spontaneous crime like murder.[34]

Sentencing in the United States is quite severe compared to that in Western Europe. It is quite likely that spending additional funds to keep convicts in prison for longer periods of time will not result in any meaningful increase in deterrence. Actually, increasing the severity

of sentences may have the unintended consequences of reducing the level of deterrence because of increased recidivism. The most appropriate criminal justice policy to reduce crime would be one which focuses on increasing the probability of apprehension and prosecution. As a Washington, D.C. police chief once stated, "to a 19 year old youth, a certain one year prison term handed out within weeks of his arrest for an armed robbery is far more effective a deterrent than a highly uncertain four or ten year term which may or may not be imposed some two years after the arrest."[44]

On the controversial issue of the deterrent effect of capital punishment, conflicting views have been expressed by various researchers using different experimental techniques. A summary of the experimental techniques and conclusions of two theorists follow.[3]

In analyzing the effect, criminologist Thorsten Sellin employed a "matching technique" whereby he selected clusters of neighboring states that were "closely similar in social organization, composition of population, and economic and social conditions." In each grouping at least one state had abolished the death penalty and at least one retained it. (Sample clusters were Maine, New Hampshire, Vermont; and Rhode Island, Massachusetts, Connecticut). He then compared homicide rates from 1920-1955 and 1920-

1962 in abolitionist and retentionist states within each group, found no significant differences, and drew "the inevitable conclusion...that executions have no discernable effect on homicide death rates..."[5]

In a study performed by Isaac Ehrlich a multiple regression analysis was used - isolating six variables as impacting the murder rate. Ehrlich focuses on the nation as a whole (rather than regions), and the relationship between homicide rate and "execution risk" (the percentage of persons convicted of murder who were subsequently executed). In the period of 1933-1969 Ehrlich found a slight negative correlation (-.06) between homicide rate and execution risk but concluded (after further data manipulation) with the bold statement that in the time frame used each additional execution per year resulted in seven or eight fewer murders.[4,7]

In the onslaught of criticism that followed Ehrlich's publication, the controversies centered upon three areas: (1) The choice of a measure to represent capital punishment (ie: "execution risk" versus statutory authorization to execute); (2) The geographic unit of observation; and (3) The possibility of there being unaccounted-for, but significant, variables. The inevitable conclusion reached was that despite the statistical sophistication of Ehrlich's

approach, the inadequacies of either the data or theory made it unsuitable.[6,8]

Perhaps more significant than the specifics of this controversy is its illustration of "the inherent vulnerability of complex statistical techniques to the adversary process."

> Any statistical analysis depends on a variety of explicit and implicit assumptions which can be challenged by opposing parties and on which experts may reasonably differ. Since courts generally have no expertise to resolve statistical disputes, they will tend to ignore the evidence altogether once such a dispute arises. The usefulness of statistical analysis to the courts may depend on the development of procedures to resolve the technical debates which seem inevitably to arise when such studies are put before them.[3]

## COURTS

There are, very simply, too many defendants for the existing system to handle effectively. Backlogs and workloads are high, and the system is underfinanced. Citizens, as victims, witnesses, defendants, or jurors routinely experience delay and inconvenience, causing great public dissatisfaction. Courts have long been criticized on their performance in criminal cases regarding such issues as trial delay, rules of evidence, and sentencing practices, but have nonetheless been quite resistant to change.[19,20]

The most obvious and direct way to reduce backlogs and workloads is to reduce the caseload. Two procedures, known as "screening" and "diversion" are methods of removing individuals from the criminal justice system before they become too involved, and are further elaborated upon, here.

### Screening.[42]

Screening is the decision to abandon, prior to either trial or plea, all formal proceedings against a person who has become involved in the criminal justice system. The two basic objectives of screening are (1) to halt proceedings against a person because of apparent insufficient evidence to support a conviction; and (2) to assure equitable treatment of the individual. The first objective

is important from the standpoint of system resource allocation in that any subsequent efforts by police, prosecutors, or courts would be futile, and the second objective is important as a preservation of one's constitutional "rights."

The problem that exists in current practice is that of undesirable screening due to resource limitations (eg: if prosecutors have important cases that demand their attention, lesser cases may be screened despite the availability of incriminating evidence). What is needed is the development of criteria and procedures within police agencies and prosecutor's offices (on an administrative level) to provide appropriate screening (judicial participation is not necessary).

In addition to screening for lack of evidence, an accused should be screened when the benefits to be derived from prosecution would be outweighed by the costs of the action. In this circumstance, the factors to be considered are diverse, and would include such things as doubt of the individual's guilt; the impact of further proceedings on the individual and his family; the deterrent effect of further proceedings (on both the accused and others); and the likelihood of prosecution by another jurisdiction.

Diversion.[42]

Diversion is the abandoning of formal criminal proceedings against an individual on the condition that he will do something in return. Typical alternatives to the criminal proceeding may be participation in a rehabilitation program or making restitution to the victim. Traditionally, diversion has been an informal and flexible procedure which police and prosecutors have been reluctant to discuss - in part for fear of public disapproval and in part because of the difficulty in obtaining data. The major benefit of diversion over sentencing is the fact that there is no criminal conviction stigma attached. In addition, there are great savings because it is acting at an early point in the criminal process, avoiding the need for formal proceedings and the conservation of other resources. The countervailing view presents the actual and potential costs - including the possible sacrifice of society's interest in protection by reducing the deterrent effect of criminal punishment.

An analysis of both recidivism and cost/benefits was performed in a Washington, D.C. diversion program.[37] The results indicated that the observed program was successful in reducing the recidivism of its successful participants, and that it was significantly more effective than mere screening (without providing rehabilitative services). The

benefits considered in the analysis included the money saved due to reduction of future offenses by the participants (based upon comparisons with a control group), the money saved over traditional methods, and the money earned by the offenders due to their higher employment rates and higher wages earned. In this study the benefits attained were shown clearly to outweigh the operational cost of the program.

Diversion is appropriate when the benefit to the community from channeling an offender into an available non-criminal program outweigh any harm done to society by abandoning criminal prosecution, (despite the likelihood that a conviction would probably result if processed through the judicial system). Considerations for participation in a diversion program include the youth of the offender, the willingness of the victim, and the probability that the personal conditions that caused the individual to commit the crime would be rectified by his participation in such a program.

Sources of delay.

Should neither screening nor diversion be appropriate to a particular case the accused will enter the court system and what may be a lengthy series of pretrial and trial procedures which will each contribute some element of delay

in reaching the final adjudication. The generally suggested cause of administrative delay has been the increase in crime. However, it is contended that the number of judges has also increased, and that the number of criminal cases/judge has not disproportionately increased.[19]

The U.S. District Judge Hon. William J. Campbell contends that the reason for the long delays in criminal trial adjudication are the many procedural requirements mandated by none other than the United States Supreme Court.[21] The specific delays he points out (and cites Supreme Court decisions for) include:

(1) Acceptability of physical evidence. Whenever physical evidence is seized pursuant to a warrant there is invariably a motion to suppress filed by the defense. Thus before proceeding with the trial the question of "probable cause" must be reconsidered and relitigated. (ie: the question of whether or not there had been sufficient evidence present initially to authorize issuance of a search warrant).

(2) Pretrial hearing. An operation that can consume as much time as the trial itself. Again, the validity of any operations which might have led to evidence in the present case must be established.

(3) The full hearing before an impartial jury with the associated delays including contrivances, changes of venue,

and possibly extensive voir dire examinations of prospective jurors.

(4) If there are multiple defendants involved with the same crime, separate trials may be required, each establishing identical proof.

(5) Prior convictions may have to be reestablished as constitutional if they are used as the basis for sentencing. (There may be a mandatory sentence for a second offender - requiring a determination that the first conviction was valid.)

(6) The ability to reopen a case (through appeal) due to some procedural error. (As Justice Frankfurter so aptly once described, "the appeal has become a painstaking search for error rather than an objective review to determine the fairness of the trial.")

In addressing some of these and other problem areas, suggestions have been made from various sources. A description of some of these proposals for speeding the flow of litigation follow.

Alternatives to arrest.

Presently, criminal proceedings originate either by arrest by a law enforcement officer (who witnessed or sus-

pects a felon), arrest pursuant to a complaint brought by a third party, or arrest following a grand jury indictment. After an arrest the accused is brought before a magistrate and either pleads guilty (in which case a penalty is immediately imposed) or not guilty (in which case a date for a preliminary hearing is set and the conditions of release are established). At least one authority urges that this post arrest custody proceeding be minimized by the use of citations and summons - similar to the procedure used in many traffic violation cases.[42]

Unlike an arrest warrant, neither a citation (issued by a court) requires the serving officer to take the offender into immediate custody. Rather, the named person is merely notified to appear in court at a specific time and place, with failure to do so constituting contempt of court. In misdemeanor and less serious felony offenses this procedure could result in significant time and manpower savings. After issuing a citation or summons, the officer would return to his normal duties rather than escort the accused through the initial court procedures, a process which may remove him from duty for several hours. In addition, the time of the judge, prosecutor, and court staff is saved by not having to attend sporadically scheduled initial appearances.

The summons/citation procedure could be used in the majority of misdemeanor and minor felony cases where the

defendants are known, have local connections, and normally could be expected to appear for trial. A study of citation use in New Haven, Connecticut disclosed that only 14.5 percent of the defendants in nontraffic cases failed to appear on the designated date, and that half of those responded to a simple letter requesting them to appear.[2]

Limitation of grand jury functions.

Of ancient origin, the grand jury has historically served two functions: to investigate criminal activity on its own initiative; and to act as a buffer between the State and the accused by weighing the accusations to determine the necessity for a trial. Empanelling and servicing a grand jury is costly. But more significantly, its effectiveness as a buffer is questionable. In most cities where the grand jury is used it eliminates fewer than 20 percent of the cases it receives (Cleveland - 7%, D.C. - 20%, Philadelphia - 3%).[42] The complexities of empanelling a grand jury guarantee attack by a defense attorney, and may result in dismissal of charges for minor discrepancies in the empanelling procedure, rather than for any substantive flaws.

The National Advisory Commission on Criminal Justice Standards and Goals recommends that grand jury indictment not be required for initiation of any criminal proceeding;

that any potential benefits are outweighed by its ineffectiveness as a screening device, the cost of the proceeding, and the procedural intricacies involved. The only circumstances in which the Commission feel that a grand jury serves a necessary function are where the area of investigation involves widespread public concern, (eg: community voice would be desirable in an investigation concerning the corruption of public officials).

Preliminary hearing and arraignment.

The evidence admitted at a preliminary hearing should be limited to what is relevant to the determination of whether or not there is probable cause to believe that a crime was committed and that the accused committed it. Extended, time consuming hearings are carried on primarily by the desire to use these proceedings as discovery devices. There should instead be provision for expanded discovery elsewhere, where court facilities and personnel would not be used.

Arraignment on the other hand should be eliminated altogether as a formal step in the prosecution. Theoretically, arraignment serves the function of informing the defendant of the precise nature of the charges against him and provides him with an opportunity for entering a plea. As a practical matter, it serves no purpose. The defendant

is already aware of the charges, and a plea can be entered without a formal appearance of all parties before the court.[21,42]

Plea bargaining.

The issue of negotiated pleas is a controversial one. The positions range from an almost unqualified endorsement (U.S. Supreme Court Chief Justice Burger),[49] through proposals for improving procedural safeguards (American Bar Association, 1963), to the recommendation for total abolition (National Advisory Commission of Criminal Justice Standards and Goals, 1973).

The several types of plea bargaining include "charge bargaining" (pleading guilty to one charge in return for dismissal of others), pleading guilty to a lesser charge, "sentence bargaining" (in return for recommendation of probation or lenient sentence), and simply admitting guilt and accepting the mercy of the court.

The critics of plea negotiation assert that its use endangers the interests of the offenders, the courts, and the public. Besides the gross injustice that might occur by an innocent defendant pleading guilty (rather than face a possibly unsuccessful trial and harsher sentence), the efficiency of the court operation may be degraded as well. Plea bargaining often occurs simultaneously with the processing of the case through the formal proceedings.

When a bargain is arrived at the case is simply removed from whatever point in the system it happens to be at. The closer to the time of trial that a case is removed, the more difficult it is for judges and lawyers to readjust schedules, and the more likely it will result in wasted time.

Furthermore, the use of plea bargaining may compromise society's interest in protection and reduce its confidence in the judicial process. The sentencing leniency that results may reduce the deterrent influence of the law and at the same time make the correctional task of rehabilitation more difficult.

Proponents of the negotiated plea point out that as a practical matter, many courts could not sustain the burden of having to try all the cases coming before them. They claim that the quality of justice in all cases would suffer if the already overloaded courts were faced with a great increase in the number of trials. They further assert that an important law enforcement need is saved by agreeing to exchange leniency for information about other serious offenders.

The critics rebut that abolition of plea bargains will not result in a large increase in the number of trials. They contend, rather, that the elimination of this process will provoke prosecutors to file more accurate charges -

corresponding more closely to what they think they can and should get as a result. Since there is no reason to believe that prosecutors are more enthusiastic about unnecessary litigation than are defense attorneys, the outcome without the bargaining process would either be a guilty plea or litigation of a justiciable controversy.[42,17,27]

The results of two recent case studies (1976) on the elimination of plea bargaining have drawn typically contradictory conclusions. The selective elimination of one form of plea bargaining in a large suburban Midwest County caused a very considerable increase in the number of trials.[17] A similar experiment conducted in an Arizona County not only failed to cause an increase, but in fact resulted in fewer trials, with defendants pleading guilty as-charged.[27]

Perhaps a jurisdiction by jurisdiction analysis must be performed on the effect of plea bargain elimination. It does remain an area for potential manpower and facilities savings.

Jury size and composition.

The requirement of a 12 person jury for criminal trials in most jurisdictions is primarily historical. As Justice White stated (Williams v. Florida, 1970)[48] in upholding the constitutionality of a six man jury in a non-

capital trial: The performance of the role "is not a function of the particular number of the body that makes up the jury." The basis should be whether the group "is large enough to promote group deliberation free from outside attempts at intimidation, and to provide a fair possibility for obtaining a representative cross section of the community." Reducing the jury size will result in obvious time and money savings and may be a worthwhile area of investigation in every jurisdiction for at least some classes of cases.

Case scheduling.

Processing delays through the judicial system appear to be increasing as the volume of cases through the system rises.[22] Delays burden the accused, impede the functioning of the court system, and in some cases may pose a threat to the community. The amount of backlog will remain constant only if in each subsequent year the court can dispose of as many cases as it dockets. One suggestion made for reducing delays generally is "priority case scheduling": Cases should be scheduled for trial with regard to the characteristics of the particular case, and not merely on a chronological basis.[42]

If the defendant is a professional criminal or a habitual offender the community interests demand a rapid

trial to reduce the public threat. If the defendant is not released from custody between apprehension and trial, the delay is burdensome on the defendant in addition to being a drain on (jail) resources.

One simple example of implementation would be in the case of a criminal apprehended in the act of committing a felony. In such a case, the proof required at trial as well as the pretrial preparation may be minimal. In practice, the offender in this type of situation typically pleads guilty as the time of trial draws near, anyway. There is no apparent reason why several months must pass between arrest and this point. (There has been legislative enactment in California and other jurisdictions placing an upper limit on the limit on the length of pretrial delay. If the limit is passed, the case is dismissed.)

Several sources recommend more extensive computer use in calendar management. The specific information that should be monitored includes: (1) disposition rates (by proceeding type); (2) attorney and witness schedules; (3) judge and courtroom schedules; (4) age index of cases awaiting trial; (5) status of defendant (ie: confined, released, rearrested, etc.); (6) index of multiple cases pending against individual defendants (to permit consolidation); and (7) index of defendants whose existing probation or parole status may be affected by the outcome of current court action.[41]

A system was set up (in 1968) in the San Francisco area covering fifty courts, and was used to find optimum trial dates (using such built-in priorities as criminal over civil, and jury over non-jury) and to send weekly trial notices to attorneys.[24]

Court administration.

In order to operate with any reasonable efficiency, it is essential for the court system to implement some comprehensive planning in the way of setting basic goals and identifying methods for achieving them. "It is unlikely that courts will fail to survive due to poor planning as a corporation might, but courts must not allow the nature of their operation to be determined by external influences and a failure to marshal resources."[13]

All of the States have established State Planning Agencies (partially supported by the LEAA of the federal government) to manage the nonjudicial business of their court systems. However, while theoretically performing an important function, in practice the "plans" published annually by these agencies often bear little relationship to the goals of the system as seen by the judiciary. One report pointed to the ineffectiveness of the plans, stating that "pragmatically, it is important that courts do their own planning because commitment to the plan is essential

for implementation and permanence. Judges are unlikely to be committed to court strategies which they have not played a principle role in developing."[39]

It seems that all that might be necessary is some closer cooperation between the court administrators and the judges (who are the ultimate managers of the system). The administrative role is essential for an efficient court operation, but it can be successful only if it is supported by the court personnel. There certainly doesn't appear to be any basic conflict of the objectives of the two groups. Perhaps a more welcome acceptance of the court administrator's position will occur with time. As was observed in the implementation of an automated record system in the Denver Court System, "changes do not come easily to an institution as steeped in tradition as the courts."[14]

## LAW ENFORCEMENT

The critical role that the police play in the community is self evident. As a decision maker, a police officer may have to react within the span of a few moments (and possibly in a most volatile situation), yet he will be held as accountable as a judge who may be able to indulge in lengthy deliberation. Police activity spans twenty-four hours a day, seven days a week, and is by its very nature unpredictable. The determination becomes one of not <u>whether</u> to provide some planning system, but rather "how much to plan, in what detail, and how far ahead."[44]

<u>Planning</u>.

Although planning needs will vary from agency to agency as a function of its size and as the nature or rate of crime changes, there are some requirements which are common to all police agencies. Two types of planning should be recognized. In addition to the administrative planning which every government agency performs (for budgeting, etc.), operational planning (relating directly to performance, specific procedures, and tactics) must be initiated by each agency. "When establishing operational plans, the police agency should examine the activities of community groups and organizations whose activities would be likely to affect

police operations. Where appropriate, members of those groups should be involved in the planning of police service that may affect their activity. Included should be social groups, labor unions, and any others appropriate."[44]

Information systems.

The decentralized and diverse nature of police agencies across the country provides a very difficult format for establishing a standard information system. Nonetheless, the set up of a uniform reporting system of criminal activity would facilitate the evaluation of crime on a local basis, and provide an input to other criminal justice system elements (eg: corrections and court personnel). Towards providing a more effective communications system, the LEAA established the National Criminal Justice Reference Service; an organization which will operate across jurisdictional boundaries to provide technical information to its users. This service intends to tie in ultimately with each of its users in an on line fashion, each with its own remote terminal.[44]

Police decision making.

The use of information in the decision making process of law enforcement officials has profound implications. The

decision of whether or not to take a juvenile offender into custody is a determination that marks the most critical decision point for both the potential criminal and the "system."

One researcher found that community attitudes, political pressures, and the personal bias of the policeman had the strongest influence on the decision to arrest, take into custody, or release. Other researchers claimed that the decision to take into custody was often based on information regarding the offender's dress and visible attitude. Still other researchers found a strong correlation between the decision to process and the low socio-economic status of the offender.[33]

The personal bias of an arresting officer is an exceedingly difficult problem to deal with, and there is no uniform solution suggested here. However, the President's Commission on Law Enforcement and the Administration of Justice maintains that the principle criteria used in the decision to arrest should be (1) the perceived need for rehabilitation; and (2) the seriousness of the offense.

Manpower utilization.

Police activities are generally broken into line, staff, and auxiliary operations. The greatest workload and

therefore the largest manpower allocation, is typically in the patrol, traffic, and detective line operations, with the staff and auxiliary services designed to support the line operations.

Police agencies have traditionally staffed the majority of positions with sworn police officers (ie: peace officers who are authorized to make arrests). Policemen have been assigned clerical tasks as well as general maintenance type duties under the theory that police experience was necessary to performance of the most basic support functions. Facing an inability to meet the demands of an increasing crime rate, some agencies began to employ civilian personnel for some functions previously performed by sworn officers.

> There are compelling reasons for using an appropriate balance of sworn and nonsworn personnel: Police morale may be boosted once they are freed from the drudgery of routine tasks and permitted to perform the work for which they were trained. Civilians capable of performing the routine tasks do not command the salaries of trained policemen, and can be less expensively recruited and trained as clerks than hired as police officers. Civilians not wishing to become police officers may nonetheless possess skills needed in police work (eg: photographers, chemists, lab technicians).44

Needless to say, unsworn personnel should not be used in jobs requiring the full exercise of police authority, or in jobs where police insight can improve the operation.

Their appropriate utilization, however, can significantly enhance the efficiency of police activity.

Measuring effectiveness of police operations.

Although significant time and effort has been spent on the collection and analysis of crime statistics to evaluate police efficiency, the results have not been exceedingly reliable.

> One reason for this analytical deficiency is that very little of the raw data collected is directly related to police productivity....In evaluating performance, police departments rely heavily upon how many arrests officers make. Such a criterion, standing alone, is inappropriate as a measure of success in crime control unless factors such as the quality of the arrest or the ultimate disposition of the case are considered. Such a solitary standard may also distort measurement of the quality of policing on an individual level by ignoring such essential variables as an officer's use of discretion or his reputation for fairness and responsiveness to citizens. In no instance should the number of arrests be used as the only measure of an officer's productivity. Performance should be judged on the basis of criteria that reflect the necessary objectives, priorities, and overriding principles of police service.[44]

The problem is compounded if one attempts to compare productivity among different local agencies. There can be order of magnitude differences in crimes/police employee, clearance rates, or per capita expenditures between cities of similar size.

The major problem in measuring effectiveness is determining the relationship between police activity and

crime prevention or deterrence. Clearly it is difficult to estimate the amount of crime that does not occur because of police prevention. In addressing the problem, victimization surveying has been developed towards obtaining information on actual criminal occurrences, and a number of productivity and effectiveness indicators have been suggested:

crime rate: The reported crime rate (for any particular type of crime) is probably the most available indicator of deterrence success, but it must be interpreted with care. When used to determine police effectiveness it should be related only to those factors over which the police have control.

clearance rate: As with crime rates, a clearance rate can be calculated for separate crime classifications. Clearances have a significant effect on crime rates because the rate of punishment may act as a deterrent. Here again, the data used must be screened. It usually contains clearances other than those made by arrest. (External factors such as confessions, and refusals of witnesses to prosecute, may distort the rates for productivity measurement purposes).

Relating the crime and clearance rates (arrests/police employee and clearances/police employee) could provide a readily available measure of apprehension productivity. However, a major shortcoming exists in that such

an approach doesn't consider the quality of the arrest (ie: a large number of poor quality arrests would nonetheless indicate high productivity).

> Even though the prevention of crime and the apprehension of offenders must be a primary responsibility of the police, the use of arrest as a measurement of performance without inquiring into the quality of the arrest or the ultimate disposition of the case is improper. To measure the quality of police performance based upon the number of arrests made is analogous to measuring the performance of a doctor on the number of operations performed - without any regard for the need for the operation or for its success.[47]

Some of the more general productivity indicators suggested include response times to calls for service (the quicker, the greater the likelihood of apprehension); citizen feelings (the extent to which the police are alleviating fears of crime - as indicated as part of a victimization survey); conviction rates as a percentage of the arrests (or the rate of conviction reversals by appellate courts); innocent persons arrested; and stolen goods recovered.[44]

Regardless of the productivity indicator chosen to be representative of police functioning, the optimization of police performance must be considered in the context of the criminal justice system as a whole.

> Success in protecting society is not measured by the length of time it takes the police to respond to a crime scene, by the number of

> arrests they make, or by the number of arrestees successfully prosecuted or sentenced. Rather, success or failure is determined by the degree to which society is free of crime and disorder.
> -NACCJ, 1973

Criminal code reform.

The substantive criminal law must be constantly revised and modernized to conform to the society's needs. Criminal statutes must be scrutinized in terms of their utility in current law enforcement; particularly if they prohibit conduct that a majority or a substantial minority find tolerable.

> A criminal code should reflect a rational attitude toward current social practices and a more realistic appraisal of the capabilities of the criminal justice system. Gambling, marijuana use and possession, pornography, prostitution, and sexual acts in private are often punished by incarceration - does this serve as a deterrent to these types of behavior? The criminal justice system was designed to deter potential offenders by threat of punishment, to punish and rehabilitate potential offenders, and to protect society by incarcerating those who pose a threat to others. Is the system performing? Does incarceration for the indicated offenses serve these purposes?[43]

The NACCJSG recommends removing incarceration as a penalty except in the case of persistent and repeated offenses (in which case some limited incarceration may be justified). This is not necessarily a recommendation for decriminalization, but rather an examination of the effectiveness of incarceration in enforcing the laws. In many cases incarcera-

tion could and should be replaced with such alternatives as probation, fines, and commitment to community treatment programs.

In addition to the reevaluation of the efficacy of existing laws, the Commission also recommends the decriminalization of drunkness, vagrancy, and minor traffic offenses.

In 1965, a third of the arrests made were for public drunkeness. Obviously this type of volume presents an extremely heavy load on the operation of the criminal justice system; burdening the police, the courts, and the penal institutions.

The National Conference of Commissioners on Uniform State Laws took a significant step toward rectifying the situation by drafting model legislation - the "Uniform Alcoholism and Intoxication Treatment Act." This proposal, endorsed by the American Bar Association in 1972, calls for the decriminalization of alcoholism and public drunkness and provides states with legal guidelines for dealing more realistically with public drunkness. Specifically, the Act calls for the development of a department in the State government to deal with alcholism; authorizes policemen to take a person incapacitated by alcohol into protective custody rather than arrest him; provides for a comprehensive

program of treatment including emergency, inpatient, outpatient, and follow-up; and provides for appropriate facilities for such treatment.

Concerning vagrancy, the Commission suggests that the existing statutes are too vague to provide reasonable guidance to the citizenry, the police, or the courts, and that the classification should be considered constitutionally "suspect" because of its vagueness. In practice, vagrancy is often used as a device for taking into custody persons suspected of other offenses.

Regarding minor traffic offenses, the Commission recommends that they be made subject to administrative disposition by an agency other than the criminal courts. Although the significance of the large amount of property damage and physical injury caused by traffic offenses cannot be neglected, the sheer volume of violations clog the lower courts - impeding the adjudication of serious offenses.

The necessity for appropriate criminal legislation is evident, for "conformity to law is in large part a function of the degree of legitimacy the general population ascribes to the system of criminal justice."[32]

# CONCLUSION

The preceding has represented an effort to compile the approaches used by numerous sources in addressing the operation of the criminal justice system and its major subsystems. For the purposes of this paper there was a limiting of the discussion of the various proposals to their "systems" aspects. The abbreviated discussions of the sociological and constitutional issues raised by the proposals in no way reflects their relative importance, but merely represents an attempt to limit the scope of the material covered. The level of comprehensiveness in the various subtopics, reflected, to some extent, the amount of source material obtained for each of the topics. The discussion has hopefully provided at least some additional insight into the nature of the issues involved in a criminal justice system analysis, and a starting point for further activity.

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